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EXAMINER

NGUYEN, PHU HOANG

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nowers et al. (U.S Patent No. 4569359). Nowers discloses a device for producing filter cigarettes in which an outer filter cover has openings (perforations) which are introduced into the filter cover by a laser perforation element (column 1, lines 34-38), the porosity being checked by measuring the pressure drop through the tipping paper or optical by measuring device (5, fig. 1). Nova further discloses:

a pressure meter (5, fig. 1);

the perforation element is arranged in the region of the device for producing the filter cigarette so it can perforate the filter of the cigarette (see figs. 1 and 2),

the perforation element can be adjusted with regard to the number and/or size of the openings to made in the filter cover (pages column, lines 34-38 and lines 55-63).

Nowers also discloses that the measurement of the openings is supplied to the control device in a feed back loop so that the perforation element can be adjusted accordingly to the response to changes in the results (column 1 1, lines 53-63).

Although Nowers does not disclose the control device is a computer, it would have been obvious to one of ordinary skill in the art that the control circuit (8, fig. 1) can

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be a computer since it is well known in the art that a computer can be used as a control device/system.

Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nowers et al. (U.S Patent No. 4569359) in view of Wahle et al. (U.S Patent No. 4193409).

Regarding claim 15, Nowers discloses a measuring device (5, fig. 1) measuring the pressure drop through the tipping paper but does not expressly disclose a testing chamber. Wahle discloses testing unit (31, fig. 4) includes a chamber where the filter cigarette is being supplied with test air and a pressure transducer (71, fig. 4) measure the pressure and then the signal is transmitted by integrated circuit (72, fig. 4) to be compared with a reference (see fig. 4 and column 11, lines 15-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Nowers to have the testing unit as taught by Wahle.

Regarding claims 16, 18-19 and 21, Wahle further discloses the testing unit is configured as a testing drum (31, fig.s 1 and 4) having a plurality of flutes arranged along the circumference for holding one filter cigarette (z, fig. 4), as the filter cigarette is capped off by sealing elements (62a, 62b on fig. 4) which are respectively adjacent to and bear against the left hand and right hand end faces of the conveyor and respectively include arcuate grooves (61a, 61b on fig. 4) connected with conduits (64a, 64b on fig. 4); the conduits communicate with a source of compressed air or another suitable gaseous testing fluid by way of a conduit (67a on fig. 4) (column 10, lines 10-23).

Regarding claim 17, Wahle also discloses region (reference sign t, fig. 4) of tobacco filter cigarette and another region (reference sign p, fig. 4) where the wrappers of filter plugs are provided with perforations; each of these region can be connected via conduit (59, fig. 4) to a pressure meter.

Regarding claim 20, although Wahle does not disclose resilient material; it is well known to use resilient material (such as rubber) for sealing application. Also, it would have been obvious to one of ordinary skill in the art to use resilient material for sealing the chamber of the testing unit during testing for the perforation of cigarette because the test involves measuring the pressure drop through the tipping paper and an unsealed chamber could result in false readings.

Regarding claim 22, in addition to the features discussed above, Wahle discloses air lines (64a, 64b on fig. 4) lead to sensor (pressure transducer 71, fig. 4) and the sensor is connected to in the control loop to compare the output with a reference (column 11, lines 34-50).

Response to Arguments

Applicant's arguments filed 3-26/2009 have been fully considered but they are not persuasive.

Regarding claim 14, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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Furthermore, the recitation of the filter cigarettes does not further limit the device for producing filter cigarettes.

Applicant essentially argues Wahle employs a different testing method with no reference being made to a control loop as claimed by Applicant. However, as discussed above for claim 22, Wahle discloses measured results are introduced into a control loop for adjusting the perforation element (column 11, lines 45-50).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHU H. NGUYEN whose telephone number is (571)272-5931. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

P.N 6/17/2009

/Philip C Tucker/

Supervisory Patent Examiner, Art Unit 1791